

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
	)	
v.	)	Case No. 0810008210
	)	
DUNCAN E. DORSEY,	)	
	)	
Defendant.	)	

Submitted: February 23, 2009  
Decided: August 31, 2009

Michael Handee, Esquire  
Deputy Attorney General  
Department of Justice  
800 N. French Street  
Wilmington, DE 19801  
*Attorney for the State*

Duncan Dorsey  
1 Lloyd Street  
Wilmington, DE 19804  
*Pro Se*

**DECISION AFTER TRIAL**

The defendant is charged on October 11, 2008 with operating a vehicle on Route 4, at Westmount Avenue in New Castle County State of Delaware and committing the offenses of, Failure to Obey a Traffic Control Device, in violation of 21 Del. C. § 4122(3); Failure to Have Required Insurance, in violation of 21 Del. C. § 2118(p); Driving a Vehicle Under the Influence of Alcohol, in violation of 21 Del. C. § 4177(a); and Endangering the Welfare of a Child while DUI or BUI, in violation of 21 Del. C. § 1102(a)(5). This is the Court's decision following trial.

## FACTS

The facts which led to these charges indicate that on October 11, 2008, at approximately 12:09 a.m., Trooper Lloyd of the Delaware State Police was traveling west on Route 4 at Westmount Avenue, in the County of New Castle, State of Delaware. He observed a vehicle later identified as driven by defendant, turn left onto Westmount Avenue without using the left turn lane. Trooper Lloyd testified he was on routine patrol and began following a 1993 brown Honda Accord, Delaware license number 105219. He observed the vehicle turn left onto Westmount Avenue, from the left-bound travel lane without first moving to the left turn lane. He followed the vehicle and activated his emergency equipment, after they both turned onto Westmount Avenue, where the vehicle came to an abrupt stop. The operator of the vehicle was identified as defendant, Duncan E. Dorsey.

The Trooper testified, seated in the front passenger seat of the vehicle was a six (6) year old or younger child. The Trooper testified the defendant stated he was coming from the Seaford race track and had only consumed one beer. The Trooper testified he detected a strong odor of alcohol beverage coming from the vehicle. Additionally, he observed the defendant's eyes were bloodshot, speech was slurred, and his pants zipper was down. Also, he saw partially concealed in the center console, a Coors beer can, which was later found to be half full. The Trooper testified he requested the defendant's registration, insurance card, and driver's license. The defendant did not produce an insurance card for the vehicle, but did produce license and registration.

Trooper Lloyd testified he requested the defendant exit the vehicle, which he did without difficulty. He thereafter administered the alphabet, counting and finger dexterity tests. Thereafter, he attempted to administer the NHSTA approved tests, but the defendant stated one of his legs was shorter than the other so the NHSTA tests were not administered. He did administer the Portable Breath Test (PBT) which the defendant failed. The defendant was arrested and taken to Troop 6.

After taking the defendant to Troop No. 6, the intoxilyzer test was administered. Prior to the test, the Trooper testified, the unit with serial number 68-010740 was tested for accuracy on September 8, 2008 (State Exhibit No. 30) and on December 2, 2008 (State Exhibit No. 4). State's Exhibit No. 4 was admitted, subject to further consideration by the Court.

The observation period began at 1:01 a.m. and the test was administered at 1:24 a.m. During this period, the Trooper testified he observed the defendant for the required twenty (20) minute period, and he did not eat, smoke, drink, vomit, or belch. Additionally, the defendant was not wearing dentures. The test results show the defendant's blood-alcohol content as .143 (State Exhibit No. 5).

Mr. Dorsey testified he was traveling on Route 4 and put on a signal to turn left onto Westmount Avenue. He did not see the Trooper behind him when making the left turn and there is no left turn lane at this location. He also testified he did not have an open beer can in the vehicle. Defendant testified he was left at the Troop for six hours. He stated Trooper Lloyd went home and left him at the Troop and he was processed by another officer. The Defendant produced an insurance card for the

vehicle with effective date of October 17, 2008 and expiration date of April 17, 2009.  
(Defense Exhibit No. 1).

Trooper Lloyd was called by the State as a rebuttal witness and he testified he was certain that there is a west bound left-turn lane at the intersection of Route 4 and Westmount Avenue.

### **DISCUSSION**

The statute, *21 Del. C. § 4177(a)*, provides in relevant part that:

- “(a) No person shall drive a vehicle . . .
  - (1) When the person is under the influence of alcohol; or . . .
  - (5) When the person’s alcohol concentration is within 4 hours after the time of driving .08 or more.

The facts indicate Mr. Dorsey was stopped by Trooper Lloyd of the Delaware State Police after he made a left turn without using the left turn lane. Mr. Dorsey challenges the basis of the stop arguing there is no left lane at the intersection of Route 4 and Westmount Avenue. However, Trooper Lloyd testified he was directly behind Mr. Dorsey and clearly observed the turn from the left travel lane and not the left turn lane.

The police are legally permitted to stop a motor vehicle when the officer has facts which would support a finding of reasonable articulable suspicion. To meet this standard, the State must show specific facts which when taken together with rational inferences from those facts reasonably warrants the stop. Officer Lloyd testified he observed the defendant make a left turn from a lane other than the left turn lane. The State has charged the defendant with violation of *21 Del. C. § 4122(3)* for making

an improper left turn at the intersection of Route 4 and Westmount Avenue. A traffic violation is a basis for the police to stop a motor vehicle. I find the Trooper's testimony credible that Mr. Dorsey made an improper traffic turn and he was legally stopped for such violation.

The Trooper administered the counting, alphabet, and finger dexterity test to the defendant. These are not approved tests by the National Highway Traffic Safety Administration (NHTSA). NHTSA has sponsored research to evaluate field tests to determine their effectiveness and correlation between blood alcohol level and performance. Further, these tests were conducted to develop standard procedures for administration and reliable performance indicators. The NHTSA test provides the Court with valid measures to evaluate test administration and scoring results. The contrast then, is that the administration of tests other than those approved by NHTSA leaves one in an area of cloud and speculation. When unapproved tests are administered and there are no clinical data to link performance with blood alcohol level, and no quantifiable method of evaluation, this renders any conclusion reached from such test purely speculative and subjective. Therefore, with such subjectivity and no scientific basis for such tests, I can find little value in such test results. This becomes more evident since field tests are designed and administered to avoid the shortcomings of casual observation. *State v. Argenault*, N.H. Supr., 336 A.2d 244 (1975).

While I find little value in the results of the non-NHTSA test results, the Trooper did detect an odor of alcoholic beverage, found an open partially consumed

can of beer in the vehicle, observed bloodshot eyes and detected slurred speech. Additionally, the Trooper administered the PBT test which Mr. Dorsey failed.

The presence of a partially consumed open can of beer, bloodshot eyes, slurred speech, failure of the PBT, and a traffic violation is a sufficient basis to find probable cause to take the defendant into custody to have him submit to the intoxilyzer test.

The defendant was taken to Troop No. 6 where the intoxilyzer test was administered after the required 20-minute observation period. The test revealed an alcohol blood content of .143. The statute provides that a person is prohibited from operating a motor vehicle where the person's alcohol content is .08 or greater. The defendant raises the issue of reliability of the machine because the test following the test is greater than 30 days. The Delaware Supreme Court in *Anderson v. State*, Del.Supr., 675 A.2d 943 held,

“There is no bright-line rule requiring the State to show calibration of an intoxilyzer device every thirty days as a predicate to admitting the results of the intoxilyzer test into evidence. Rather, we hold that the calibration must be conducted within a reasonable proximity in order to be admissible.”

Here, the calibration following the administration of the test is approximately 51 days. I find that 51 days under these facts is not so remote in time to prohibit the admissibility of the test results.

The defendant is also charged with Driving Without Insurance and Endangering the Welfare of a Child. The defendant presented an insurance card with

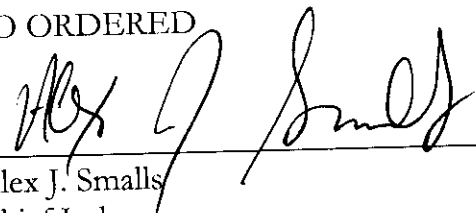
an effective date of October 17, 2008, but he was issued the citation on October 11, 2008. No valid document has been produced as required by the statute to show the vehicle was properly insured on the date the citation was issued. Subsection (p) of 21 Del. C. § 2118 provides that; "the insurance identification card issued for the vehicle . . . shall be produced upon the request of the police officer." The defendant has failed to produce a valid document for the date in question, as required by the statute.

With regard to the charge of Endangering the Welfare of Child, the only evidence in the record is that the child was in the vehicle with the defendant. The testimony indicates there was another adult in the vehicle which the police released and permitted to leave without charging. Thus, under these facts, I find the defendant not guilty of this offense.

Based upon the evidence, I find that the State has proved beyond a reasonable doubt that the defendant failed to obey a traffic control device in violation of 21 Del. C. § 4122(3); Operating a Vehicle Without Required Insurance, in violation of 21 Del. C. § 2118(p), and Operating a Motor Vehicle While Under the Influence of Alcohol, in violation of 21 Del. C. § 4177(a), and he is adjudged guilty of these three offenses.

The Clerk will schedule the matter for SENTENCING.

SO ORDERED

  
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Alex J. Smalls  
Chief Judge